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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

REFUSE FASCISM BAY AREA,
HEATHER GREY, MICHAELA
GROENEVELD, STEPHANIE HIBBERT,
and BRUCE NEUBURGER,

Plaintiffs,

v.

CITY AND COUNTY OF SAN
FRANCISCO, and DIANE REA, in her
individual capacity and her official
capacity as Manager of Permits and
Reservations, San Francisco Recreation
and Park Department,

Defendants.

Case No.

COMPLAINT

I. NATURE OF THE CASE

1. Plaintiffs challenge Defendants' denial of their application for an event permit, which prevents them from holding a two-hour rally at Union Square on November 4, 2017, as part of a coordinated nationwide "Resist Facism" protest. Defendants' denial did not meet any of the constitutional requirements for regulating speech in a traditional public forum, which Union Square certainly is. The denial was content-based because it relied, in part, on concerns about

1 people's reaction to Plaintiffs' message – the impermissible heckler's veto. The permit denial was
 2 not pursuant to a reasonable time, place, and manner restriction because it was subjective and
 3 arbitrary, inasmuch as Defendants' took 15 days to supposedly determine that there is a conflict
 4 with another permitted event, which is actually the ice rink that sits in the park for two-and-a-half
 5 months. Finally, there is no adequate alternative channel for Plaintiffs' message. Defendants
 6 offered only U.N. Plaza, which is a business district deserted on a Saturday, and Hallidie Plaza, a
 7 small corner space that is not a gathering place in any meaningful sense and cannot compare in
 8 any way to Union Square.

9 **II. JURISDICTION AND VENUE**

10 2. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. § 1331 because
 11 it alleges violations of the United States Constitution and 42 U.S.C. § 1983, and therefore raises
 12 questions of federal law. Jurisdiction is also based upon 28 U.S.C. § 1343 because relief is sought
 13 for the deprivation of Plaintiffs' constitutional rights under color of state law.

14 3. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
 15 § 1391(b)(2), because a substantial part of the events or omissions giving rise to the claims herein
 16 have occurred and are continuing to occur in this District.

17 **III. PARTIES**

18 **A. Plaintiffs**

19 4. REFUSE FASCISM BAY AREA is an unincorporated association based in the
 20 San Francisco Bay Area. It is part of a national organization that defines itself as “a movement of
 21 people coming from diverse perspectives united in our recognition that the Trump/Pence Regime
 22 poses a catastrophic danger to humanity and the planet and that it is our responsibility to drive
 23 them from power through non-violent protest.”

24 5. HEATHER GREY lives in Berkeley, California, and has been active in RFBA for
 25 the past year. She plans to participate in the November 4, 2017 Refuse Fascism Bay Area rally at
 26 Union Square.

27 6. MICHAELA GROENEVELD is a resident of Belmont, California, and has
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1 participated in approximately five protest events organized by RFBA since August of this year.
2 She plans to participate in the November 4, 2017 Refuse Fascism Bay Area rally at Union Square.

3 7. STEPHANIE HIBBERT lives in San Francisco, California. She has participated in
4 RFBA activities since July of this year and plans to participate in the November 4, 2017 Refuse
5 Fascism Bay Area rally at Union Square.

6 8. BRUCE NEUBURGER is also a San Francisco resident. He has been active in
7 RFBA since soon after the organization was founded and plans to participate in the November 4,
8 2017 Refuse Fascism Bay Area rally at Union Square.

9 **B. Defendants**

10 9. The CITY AND COUNTY of SAN FRANCISCO is a public entity established by
11 the laws and Constitution of the State of California, and owns, operates, manages, directs, and
12 controls the San Francisco Parks Department, which is the entity that has denied RFBA an event
13 permit to which it is entitled under the United States Constitution.

14 10. DIANE REA, is sued in her individual capacity and her official capacity as
15 Manager of Permits and Reservations for the San Francisco Recreation and Park Department.

16 **IV. FACTS**

17 11. Union Square is a 2.6-acre public plaza bordered by Geary, Powell, Post and
18 Stockton Streets in downtown San Francisco, California. Its perimeter is surrounded by sidewalk,
19 within which there are benches, grassy areas, walkways, trees and landscaping, public restrooms,
20 cafés, some retail shops, and at the center, the Dewey Monument that stands 85-feet high.
21 Beneath the Square is underground public parking.

22 12. A representative of RFBA, Rita Akayama, contacted the San Francisco Recreation
23 and Park Department by telephone on October 5, 2017, to obtain a permit to hold a Refuse
24 Fascism rally at Union Square on November 4, 2017 (the Rally). She spoke to Defendant Rea.
25 Akayama understood from her conversation with Rea that RFBA was either being denied the
26 opportunity to hold the Rally or being discouraged from doing so.

27 13. Akayama sent Rea an email that night addressing the issues Rea raised on their
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1 call earlier that day. Akayama understood Rea's concerns to be, first, that the space is not large
2 enough because it is possible that thousands might come and there is not enough space for that.
3 Second, that due to the controversial nature of the Rally, Rea had safety concerns.

4 14. Rea responded to Akayama by email the next day, clarifying that her office was
5 "not denying you a permit but rather offer[ing] my assistance in helping you with planning for a
6 safe gathering in a public space." Rea noted further that "[o]ur foremost concern is for public
7 safety; mass gatherings can be tricky as they also provide opportunities for others to disrupt. I
8 think you will understand given the recent tragedies we have been witnessing worldwide."

9 15. Rea's October 6, 2017 email to Akayama referenced in the preceding paragraph
10 explained how Union Square is reserved exclusively for commercial and tourist activities during
11 the holiday months. Rea asserted that:

12 Union Square Plaza is already a busy area with two cafes, a ticket outlet, and bike
13 rentals. In October, we have an ice rink moving in that will take up more than half
14 of the plaza area. At the end of October, we have the annual holiday tree loading in
15 that will take up another quarter of the space. It takes multiple days to load in and
16 may go into the beginning of November. We do not typically reserve the space for
17 additional activities on top of this plus the increased general public at this time of
18 year.

19 16. On October 9, 2017, RFBA submitted a formal online application for a permit for
20 the November 4 Rally at Union Square. The organization chose November 4 as part of a
21 nationwide, coordinated effort to protest and raise awareness of the grave danger that the
22 Trump/Pence Regime poses to the world. Protest events will be held on the same day in numerous
23 cities throughout the country: Austin, Atlanta, Boston, Chicago, Cincinnati, Cleveland, Honolulu,
24 Indianapolis, Los Angeles, Minneapolis, New York City, Omak, Philadelphia, Pittsfield,
25 Portland, Salem, San Francisco, Seattle, and Tucson.

26 17. By comparison, the City of Los Angeles has gone to great lengths to accommodate
27 the November 4 Refuse Fascism protest. It is reported that:

28 The LAPD's Film Unit will be unavailable for film detail duty from noon PT
Friday through Monday at 6 AM PT and will be denying all requests for film
activity in the downtown area. News crews, however, will not be restricted.

The Department of Transportation has also been instructed to not allow film-
related postings of temporary parking restrictions and lane closures in the area for

1 anything other than *First Amendment permits relating to the protest*.¹

2 18. On October 10, 2017, Akayama emailed Rea to revise the time for the RFBA
3 permit request, to change it from 4:00 p.m. through 6:00 p.m. to 3:00 p.m. through 5:00 p.m.

4 19. That same day, another RFBA representative submitted to SFRPD an Amplified
5 Sound Application online for the use of powered speakers and a generator at the Rally at Union
6 Square on November 4, 2017.

7 20. On October 17, 2017, Rea emailed Akayama, claiming that Union Square “is not
8 available on these days as it is already permitted to the annual ice rink and holiday tree. There is
9 not enough space to safely hold this many additional people.”

10 21. Defendant Rea’s correspondence with RFBA made numerous references to
11 supposed threats to public safety that could arise from Plaintiffs’ Rally. She claimed that “mass
12 gatherings can be tricky as they also provide opportunities for others to disrupt,” and that the
13 SFPD was “very concerned about safety issues.”

14 22. The SFRPD website’s 2017 Special Events Master Applications chart lists the
15 operation of the ice rink, from November 1 through January 15, as the only other permit covering
16 November 4. It makes no mention of a permit sought or granted for the holiday tree.

17 23. On October 20, 2017, Rea informed Akayama unambiguously by email that
18 SFRPD was denying RFBA’s permit application. That message claimed that “[w]e have also
19 spoken to SFPD who had seen advertisements for your event and was very concerned about
20 safety issues. They are reaching out to you separately.” An SFPD officer did reach out to an
21 RFBA representative and the officer expressed no such concern about supposed safety issues.

22 24. On October 31, 2017, Barry Thornton, on behalf of RFBA, spoke by telephone
23 with SFPD Officer Gregory D. Burchard. Thornton said they were expecting hundreds of people
24 and Burchard asked whether that meant a few hundred or a thousand. Thornton explained that he
25 wasn’t sure, but it would probably be somewhere in between. Burchard said “okay.” When
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27 ¹ [http://deadline.com/2017/10/refuse-fascism-protest-los-angeles-film-tv-production-shutdown-](http://deadline.com/2017/10/refuse-fascism-protest-los-angeles-film-tv-production-shutdown-1202198710/)
28 [1202198710/](http://deadline.com/2017/10/refuse-fascism-protest-los-angeles-film-tv-production-shutdown-1202198710/) (emphasis added).

1 Thornton explained that they were planning to march from Union Square down to Market Street,
2 then to the Castro, then to the Mission, and finish at 24th Street and Mission Street, Burchard said
3 that the police were there to assist them. Burchard asked Thornton if the group was going to do
4 anything like chain themselves to a building, and Thornton said they were only going to rally and
5 march and that no civil disobedience was planned. Burchard said "okay." Burchard never
6 indicated to Thornton that the Rally presented a public safety problem.

7 25. On October 31, 2017, RFBA, through its counsel, sent a letter by fax and email to
8 the San Francisco City Attorney, with copies to the Mayor of San Francisco and Defendant Rea,
9 explaining the circumstances under which RFBA is being denied its constitutional rights.
10 Notwithstanding that letter, a Deputy City Attorney responded the next day indicating that the
11 Defendants would continue to deny RFPA a permit for the Rally. Neither the Mayor nor the
12 SFRPD General Manager has corrected the constitutional violation.

13 **V. CLAIMS**

14 **COUNT ONE – FREE SPEECH**

15 26. Defendants are violating the Free Speech Clause of the First Amendment by
16 denying Plaintiffs a permit for the Rally at Union Square on November 4, 2017. This violation is
17 actionable pursuant to 42 U.S.C. § 1983.

18 27. Defendants are denying Plaintiffs access to a traditional public forum and have not
19 done so pursuant to a reasonable time, place, and manner restriction. In addition, adequate
20 alternative channels for Plaintiffs' speech do not exist.

21 **COUNT TWO – FREEDOM OF ASSEMBLY**

22 28. Defendants are violating the Freedom of Assembly Clause of the First Amendment
23 by denying Plaintiffs a permit for the Rally at Union Square on November 4, 2017. This violation
24 is actionable pursuant to 42 U.S.C. § 1983.

25 29. Defendants are denying Plaintiffs access to a traditional public forum and have not
26 done so pursuant to a reasonable time, place, and manner restriction. In addition, adequate
27 alternative channels for Plaintiffs' assembly do not exist.
28

COUNT THREE – EXPRESSIVE ASSOCIATION

30. Defendants are violating Plaintiffs' right to expressive association, a right recognized by the Supreme Court, by denying Plaintiffs a permit for the Rally at Union Square on November 4, 2017. This violation is actionable pursuant to 42 U.S.C. § 1983.

VI. PRAYER FOR RELIEF

WHEREFORE the Plaintiffs respectfully request that the Court:

- (a) Declare that Defendants' actions violate Plaintiffs' rights under the First Amendment to the United States Constitution;
- (b) Issue an injunction enforcing Plaintiffs' right to hold a peaceful rally at Union Square on November 4, 2017 from 3:00 p.m. to 5:00 p.m.;
- (c) Grant Plaintiffs a trial by jury on all issues so triable;
- (d) Award Plaintiffs compensatory damages if Defendants prevent them from fully exercising their constitutional rights;
- (e) Award Plaintiffs attorney fees and costs associated with this action; and
- (f) Award any further relief in favor of Plaintiffs as is just and proper.

DATED: November 2, 2017

Respectfully submitted,

KATON.LAW

/s/ Glenn Katon

Glenn Katon

ATTORNEY FOR PLAINTIFFS REFUSE
FASCISM BAY AREA, HEATHER GREY,
MICHAELA GROENEVELD, STEPHANIE
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